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Mr. Michael R. Cornelius, Comptroller  
Department of Administration and Control  
State House Annex  
Concord, New Hampshire 03301

Dear Mr. Cornelius:

By letter dated June 28, 1983, you have asked for an opinion concerning the requirements imposed upon your department by Laws 1983, C. 374. Specifically, you have asked us to determine whether C. 374 requires you to encumber amounts available in any agency's appropriation equal to that which is due the Department of Centralized Data Processing (CDP) above and beyond any amounts which are available in specific line items in the budget for services rendered by CDP.

You indicated that you construed C. 374 to require you to encumber only those amounts available in line item accounts specifically available for centralized data processing services. You further indicated that you did not foresee any means to determine prior to the close of the fiscal year, whether there were amounts available beyond such specific line items in the case of agencies for which there are either no "available" funds intended for CDP services, or where the amount of such funds falls short of the amount owing to CDP. For the reasons stated below, it is my opinion that Laws 1983, C. 374, requires the encumbrance of any available funds in each agency appropriation, in amounts sufficient to discharge the obligations to CDP for services provided to each such agency. Because these funds were not encumbered by the close of the fiscal year, however, they lapse to the general fund in accordance with RSA 9:18.



It is clear that C. 374 is not limited to line item appropriations specifically identified for CDP services. The controlling language of C. 374 is, "the comptroller shall ... encumber from any available funds in each user agency appropriation a sum sufficient to pay to the department of centralized data processing all sums due for services rendered ..." (emphasis added). This section can only be construed as imposing a mandatory obligation to determine the existence of available (otherwise unencumbered) funds and to apply those funds to outstanding obligations due CDP.

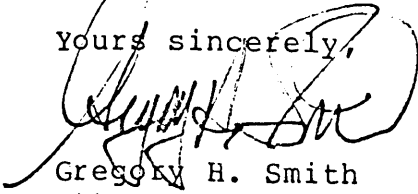
You have indicated that it was not possible to implement the provisions of the chapter by the conclusion of the 1983 fiscal year, particularly since determining whether funds are "available" in most instances required an individual review of each agency's legal obligations in light of its unexpended appropriation. Chapter 374 provides that you encumber available funds "upon the effective date of this act," but in order to do so, you must first determine whether there are any available funds to encumber. If the otherwise available funds of any user agency were not encumbered between the passage of C. 374 on June 22, 1983 and June 30, 1983, those funds lapse in accordance with RSA 9:18. That section provides:

"Except as otherwise specially provided, all unexpended portions of general appropriations for which a legally enforceable obligation has not been incurred during the fiscal year for which they were appropriated shall lapse at the end of each fiscal year."

I do not believe that the legislature intended to prevent the lapse of otherwise unexpended funds across state government until the necessary determinations were made as to amounts owing to CDP and the amounts of available funds. This view is supported by C. 374 itself, which provides that with respect to disputed amounts, in the event the dispute is not resolved by the governor by June 30, 1983, the amounts lapse to the appropriate fund.

If you wish to discuss this matter further or if you have additional questions, please feel free to contact us.

Yours sincerely,



Gregory H. Smith  
Attorney General

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